McElwaine, C.J.—Upon motion made on behalf of the Commissioners for executing the Office of the Lord High Admiral of the United Kingdom it was ordered that all parties concerned do attend this Court to show cause why an Order of Prohibition should not issue directed to the District Judge at Singapore and the Judgment Creditors to prohibit them from further proceeding in Civil District Court garnishee summons No. 6 of 1941 upon the ground that the said Civil District Judge has no jurisdiction to hear or determine such summons and/or to make any order thereon.

In compliance with this order the Extra Assistant Controller of Labour appeared by Mr. Butterfield, Crown Counsel, and consented to the Order being made. I considered he was right in so consenting and I made the Order.

The money sought to be attached is due (if it is due at all) to the judgment debtors under contracts made between them and the Lords Commissioners of the Admiralty and the only monies in the hands of the garnishee out of which may be paid any just claims of the judgment debtors are the funds and monies of the Crown in its Government of the United Kingdom which monies are administered by and under the control of the Lords Commissioners of the Admiralty.

A garnishee notice and a garnishee summons were served on the Superintending Civil Engineer, H. M. Naval Base, Singapore as garnishee, and after hearing the summons the learned District Judge ordered the garnishee to pay to the Bailiff on account of the judgment debtors out of money in his hands due to the judgment debtors $592.45 and $4 costs.

In *Poh Yee Choi and Chan Chin Moi* (Plaintiffs) *v. Shun Fah & Co.* (Defendants), *The Paymaster, Malaya Command* (Garnishee) [1] I held that monies due by a Department of His Majesty's Government in the United Kingdom cannot be garnished in this Colony. What can be garnished is a debt for which the judgment debtor could sue the garnishee. The judgment debtors could not sue the Lords Commissioners of the Admiralty in this Court unless their Lordships submitted to the jurisdiction, and it follows that a creditor of the judgment debtor can have no greater right.

There is no jurisdiction in any Court in this Colony to compel the Lords Commissioners of the Admiralty to pay any money in the absence of a submission to the jurisdiction.

It does not appear whether any objection to the jurisdiction was raised before the learned District Judge, but even if it was not, jurisdiction cannot be conferred by waiver of objection, *Simpson v. Crowle*[2]; *Grech v. Board of Trade*[3]; *R. v. Dennis*[4]; *Duff Development Co. v. Government of Kelantan*[5].

Nothing in the Courts Ordinance gives jurisdiction to sue the King in His Government of the United Kingdom, or to attach his monies, and such suits are not covered by the Crown Suits Ordinance.

No rule can be properly made under section 88 or 89 of the Courts Ordinance which goes beyond the jurisdiction of the Court, and so far as Order XXVII r. 9 (3) (b) of the District Court Rules implies that monies the property of His Majesty's War Office, Admiralty or Air Ministry can be attached in this Colony it is ultra vires.

There was no jurisdiction to make the order attaching this money, and, to quote the words of the Master of the Rolls in *Attorney-General v. Hotham*[6] "it follows as a matter of course, if they had no jurisdiction, that their decision is a nullity: it does not create any necessity for an appeal, when a limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it; if it decides upon matters, with respect to which it has no authority, its decision amounts to nothing, and no party can in the least be bound by it."

I therefore made the order prohibiting the District Judge and the judgment creditors from further proceeding in Civil District Court Garnishee Summons No. 6 of 1941.

By agreement there will be no order as to costs.

Order accordingly.

F. M. S. REPORTS.

P. P. vs. CHUAN HOO.

[App. Crim. Juris. (Poyser, C.J.) February 5, 1941]

Second-hand Dealers Enactment (Cap. 86) Sections 2 (ii), 6 and 9—Person in possession of second-hand goods in unusual quantity and apparently exposed for sale presumed to be a dealer in second-hand goods.

The respondent was found in possession of second-hand goods in an unusual quantity and these goods were apparently exposed for sale. There was no evidence that he had actually sold any of these goods.

Held, that having regard to the presumption in sub-section (ii) of Section 2 of the Second-hand Dealers Enactment there was ample uncontradicted evidence to show that the respondent was a dealer within the meaning of the Enactment and that he was guilty of the

offence charged, namely dealing in second-hand goods without having a licence.

Case referred to:—

(1) *Tan Weng Chee and another vs. Public Prosecutor* 5 F.M.S.L.R. 125.

APPEAL BY THE PUBLIC PROSECUTOR.

A. J. Grattan-Bellew (D.P.P.) for the Public Prosecutor.

M. Edgar for respondent:—

Before a person can fall within the ambit of the Second-hand Dealers Enactment, it must be proved that he is a dealer. Unless and until he is proved to be a dealer, no offence is committed under the Enactment.

The case rests on the interpretation of the word "dealer". The case of **Tan Weng Chee and another vs. P.P.**[1] is authority for construing the meaning of the word "dealer" as one who buys and/or sells.

The meaning of the word "deal" unquestionably extends to buying and/or selling. There must be two parties to what is called a deal. A man cannot be said to deal with himself. There must be someone else for him to deal with.

As no evidence was produced to show that the respondent either bought and/or sold second-hand goods, it cannot be said that the respondent was a dealer in second-hand goods.

Poyser, C.J.—The respondent in this case was charged with an offence under sections 6 and 9 of the Second-hand Dealers Enactment (Cap. 86). The facts were as follows.

On the 2nd of December 1939 a police officer visited the respondent's shop, and found there a considerable quantity of second-hand goods lying on the floor, viz: various bicycle parts such as mud-guards, handle bars etc. There were two or three people in the shop, apparently customers, who were enquiring the prices of those second-hand goods. There were also new bicycle parts kept in the shop. The respondent, and other shop-keepers dealing in second-hand goods had previously been warned to take out licences.

The respondent did not give evidence. At the conclusion of the evidence for the prosecution it was contended on his behalf:—

(i) that the goods did not come within the second schedule of the Enactment;

(ii) that there was no evidence that he dealt in those articles; and

(iii) that there was no evidence of anything having been sold.

The Magistrate agreed with these contentions, and held that there was no case for the respondent to answer and acquitted him. The Public Prosecutor appeals from this decision on the following grounds:—

"(a) The learned Magistrate was wrong in law in holding that as the goods described by the prosecution did not come within the second schedule of the Second-hand Dealers Enactment (Cap. 86) the prosecution had not made out a case for the respondent to answer;

(b) the learned Magistrate failed to take into consideration the presumption created by section 2 (ii) of the said Enactment;

(c) the learned Magistrate was wrong in law in not calling on the respondent to enter upon his defence".

At the conclusion of the arguments I allowed the appeal on the following grounds.

The Magistrate did not take into account the provisions of section 2 (ii) of the Second-hand Dealers Enactment, which is as follows:—

"Every person in whose possession second-hand goods are found apparently exposed for sale or who is found in possession of second-hand goods in an unusual quantity shall be deemed until the contrary be proved to be a dealer in second-hand goods".

In this case the respondent was in possession of second-hand goods in an unusual quantity, viz: 25 or 26 mud-guards, about 20 handle bars, and 13 or 14 bicycle frames. Moreover such goods were apparently exposed for sale. The presumption therefore arose.

There was no evidence that the respondent actually sold any of these second-hand articles, but in order to establish a conviction under the Enactment, I do not think it is necessary that sale should be proved. There is authority for that proposition, viz: the case of *Tan Weng Chee & another v. Public Prosecutor*[1].

In this case, although there was no evidence of sale, there was abundant evidence that the second-hand articles were exposed for sale, and that negotiations for their sale were taking place. There was, therefore, in my opinion ample uncontradicted evidence to prove that the respondent was a dealer within the meaning of the Enactment.

I was unable to understand that part of the Magistrate's judgment in reference to the second-hand goods not coming within the second schedule of the Enactment. The second schedule is obviously intended to apply to itinerant dealers in bottles, old iron, tins etc. The effect of it is that such dealers shall carry their licences on them, but need not comply with certain other provisions of the Enactment, such as keeping books and having a place of business.

In my opinion there was unquestioned evidence that the respondent was guilty of the offence charged, and he should have been convicted.

I accordingly allowed the appeal, and as the case was argued both in the lower Court and on appeal purely on points of law, and there was no dispute as to the facts, I directed a conviction to be recorded, and imposed a nominal fine of one dollar or one day's R.I. in default. I imposed a nominal penalty, as the appeal was brought as a test case, and the respondent has been put to be a good deal of expense.

Appeal allowed.

PUBLIC PROSECUTOR vs. ONG CHO TECK.

[App. Crim. Juris. (Terrell, Ag. C.J., F.M.S., McElwaine, C.J., S.S. & Aitken, Ag. J.A.) June 19, 1941]

Motor Vehicles (Construction and Use) Rules, 1937, Rules 56 and 80 — Permitting a motor vehicle to be used on the public road with inefficient brakes — Meaning of "permit."

The accused was charged with permitting a motor vehicle to be used on the public road with brakes the system of which was not maintained in good and efficient working order, an offence under Rule 56 and punishable under Rule 80 of the Motor Vehicles (Construction and Use) Rules 1937. The accused in his defence said that he left the car entirely to his servant.

Held, that the offence was committed as the owner had permitted the use of the car and the brakes were in fact defective. "Permits" in the Rules did not have the same meaning as "Permits knowing of the breach of the Rule." It meant that the owner consciously allowed his driver to take the car out. The prohibition against the brakes being defective was absolute. The owner would not however have been liable if the car had been taken out without his permission.

Cases referred to:—

(1) *Mahmoud v. Ispahani* (1921) 2 K.B. 718.
(2) *Cotterill v. Penn* (1936) 1 K.B. 53.
(3) *R. v. Dacey* 27 Cr. App. Reports 86.
(4) *In re K. Syed Mohamed* Singapore Miscellaneous Application No. 3 of 1935.
(5) *R. v. G. H. Kiat* (1938) 7 M.L.J. 150.

Case referred by Magistrate.

J. F. Draper for the Public Prosecutor.

R. Ramani for the accused.

The judgment of the Court of Appeal was read by:

Terrell Ag., C.J. F.M.S.—This is a case referred by the Magistrate under section 62 of the Courts Enactment, arising out of the trial of Ong Cho Teck, on a charge of permitting a motor vehicle to be used on the public road with brakes the system of which was not maintained in good and efficient working order, an offence under Rule 56 and punishable under Rule 80 of the Motor Vehicles (Construction & Use) Rules, 1937.

When charged, the accused said:—

> "I left the car entirely to my servant. There is no point in hearing the case. If the brakes were bad I am guilty. I agree and I do not dispute the fact that the brakes were bad."

The learned Magistrate heard argument as to the effect of this plea, and he delivered a considered judgment in which he said:—

> "As the charge was of 'permitting' I hold that some evidence of the state of mind of the defendant must be given and held therefore that a conviction as charged could not be sustained on the plea tendered."

The Magistrate found from the plea that the defendant left the care of the car to his servant absolutely, and in so doing he failed in the duty imposed upon him by rules 56 and 80. "I therefore held him guilty of the offence of failing to comply with the provisions of rule 56 in that the braking system of his car was admittedly defective." The learned Magistrate held that such failure was a failure to comply with an absolute prohibition imposed on all owners of motor cars, and that the accused was liable for the act of his servant in using the car in question on the road whilst its braking system was defective, although he may have had no personal knowledge of the defect.

In the opinion of the Court the conviction was correct, but should have been of the offence charged.

The relevant provisions of the Rules under which the charge was laid, that is Rules 56 and 80 in Part III of the Motor Vehicles (Construction & Use) Rules 1937, (*Allen* volume VIII, pages 3204 and 3208) read as follows:—

> 56. "Every part of every braking system and of the means of operation thereof fitted to a motor vehicle shall, at all times while the motor vehicle is used on a road, be maintained in good and efficient working order and shall be properly adjusted."
>
> 80. "If any person uses or causes or permits to be used on any road a motor vehicle in contravention of or fails to comply with any of the requirements of the rules contained in Part III, he shall be guilty of an offence and liable on conviction to a fine of two hundred dollars."

Rule 56 imposes an absolute duty on the owner of a motor car, but it is not by itself a penal rule. Rule 80 contemplates four possible offences:—

(a) using a motor car in contravention of the rule;